

1

2

3

4

5

UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA

8 BRIAN ALFORD,

Case No. 2:14-cv-00333-APG-NJK

*Petitioner,*

10 || vs.

## ORDER

DWIGHT NEVEN, *et al.*,

### *Respondents.*

15 Following upon the notice (Dkt. #6) of appearance by petitioner's counsel in this habeas matter,

16           **IT IS ORDERED** that the Federal Public Defender's Office is appointed as counsel for  
17 petitioner pursuant to 18 U.S.C. § 3006A(a)(2)(B), with Jason F. Carr, Esq., appearing as petitioner's  
18 counsel of record.

19           **IT FURTHER IS ORDERED** that petitioner shall have until up to and including **one hundred**  
20 **fifty (150) days** from entry of this order within which to file an amended petition and/or seek other  
21 appropriate relief. Neither the foregoing deadline nor any extension thereof signifies or will signify  
22 any implied finding as to the expiration of the federal limitation period and/or of a basis for tolling  
23 during the time period established. Petitioner at all times remains responsible for calculating the  
24 running of the federal limitation period and timely asserting claims, without regard to any deadlines  
25 established or extensions granted herein. That is, by setting a deadline to amend the petition and/or by  
26 granting any extension thereof, the Court makes no finding or representation that the petition, any  
27 amendments thereto, and/or any claims contained therein are not subject to dismissal as untimely. *See*  
28 *Sossa v. Diaz*, 729 F.3d 1225, 1235 (9<sup>th</sup> Cir. 2013).

1           **IT FURTHER IS ORDERED** that respondents shall file a response to the amended petition,  
2 including potentially by motion to dismiss, within sixty (60) days of service of the amended petition,  
3 with any requests for relief by petitioner by motion otherwise being subject to the normal briefing  
4 schedule under the local rules. **Any response filed shall comply with the remaining provisions**  
5 **below, which are entered pursuant to Habeas Rule 4.**

6           **IT FURTHER IS ORDERED** that any procedural defenses raised by respondents in this case  
7 shall be raised together in a single consolidated motion to dismiss. In other words, the court does not  
8 wish to address any procedural defenses raised herein either in *seriatum* fashion in multiple successive  
9 motions to dismiss or embedded in the answer. Procedural defenses omitted from such motion to  
10 dismiss will be subject to potential waiver. Respondents shall not file a response in this case that  
11 consolidates their procedural defenses, if any, with their response on the merits, except pursuant to 28  
12 U.S.C. § 2254(b)(2) as to any unexhausted claims clearly lacking merit. If respondents do seek  
13 dismissal of unexhausted claims under § 2254(b)(2): (a) they shall do so within the single motion to  
14 dismiss not in the answer; and (b) they shall specifically direct their argument to the standard for  
15 dismissal under § 2254(b)(2) set forth in *Cassett v. Stewart*, 406 F.3d 614, 623-24 (9th Cir. 2005). In  
16 short, no procedural defenses, including exhaustion, shall be included with the merits in an answer.  
17 All procedural defenses, including exhaustion, instead must be raised by motion to dismiss.

18           **IT FURTHER IS ORDERED** that, in any answer filed on the merits, respondents shall  
19 specifically cite to and address the applicable state court written decision and state court record  
20 materials, if any, regarding each claim within the response as to that claim.

21           **IT FURTHER IS ORDERED** that petitioner shall have **thirty (30) days** from service of the  
22 answer, motion to dismiss, or other response to file a reply or opposition, with any other requests for  
23 relief by respondents by motion otherwise being subject to the normal briefing schedule under the local  
24 rules.

25           **IT FURTHER IS ORDERED** that any additional state court record exhibits filed herein by  
26 either petitioner or respondents shall be filed with a separate index of exhibits identifying the exhibits  
27 by number. The CM/ECF attachments that are filed further shall be identified by the number or  
28 numbers of the exhibits in the attachment.

1           **IT FURTHER IS ORDERED** that the Court's prior order (Dkt. #3) is MODIFIED IN PART  
2 as follows: **The hard copy of any exhibits filed by either counsel shall be delivered -- for this case**  
3 **-- to the Clerk's Office in Reno.**

4 The Clerk shall SEND a copy of this order to the CJA Coordinator for this division.

5 || Dated: April 4, 2014.

**ANDREW P. GORDON**  
United States District Judge